The State of New Hampshire
Department of Environmental Services

Michael P. Nolin
Commissioner

January 11, 2006

The Honorable Sheila Roberge, Chairman
Public and Municipal Affairs Committee
State House, Room 103
Concord, NH 03301

RE: SB 346 Relative to codifying septic system rules

Dear Senator Roberge:

Thank you for the opportunity to provide comments on Senate Bill 346 relative to codifying septic system rules. Please note that the title of this bill is misleading because the bill makes no changes to the rules relative to septic systems. Rather, it proposes to place into law significant changes to the Septage and Sludge Management Rules, (Env-Ws 1600 and 800, respectively), as just revised and adopted by the Department of Environmental Services (DES) in October 2005.

DES supports in concept for inclusion in statute some of the proposed changes in SB 346, related to training, financial responsibility, and, with reasonable modification, public notification. However, we are strongly opposed to the passage of the many sections of SB 346 that are inconsistent with the substance of the recently adopted rules and other standard DES practices, such as for complaint resolution. Some background information and more detailed comments are provided below.

The new Septage Management Rules were the result of a four year process completed in October, 2005 when these rules were adopted by DES. There were many revisions during these four years to try to accommodate and balance concerns raised by both the septage industry and the public. Prior to final adoption, changes were made to address concerns raised during the initial hearing of the Joint Legislative Committee on Administrative Rules (JLCAR) then these rules were adopted without final objection from JLCAR. The new rules provide revised standards for septage management practices that we believe reasonably balance the protection of public health and the environment and economic considerations of septage management.

The state's septage disposal capacity has not kept up with disposal needs for a number of reasons including wastewater treatment plant capacity limits, closure of facilities such as septage lagoons, and growth. The number of septic systems in New Hampshire grows in the order of 8-10,000 systems per year increasing the septage disposal capacity demand. Also, nearly 30% (approximately 30 million gallons) of NH's septage is disposed at out at out-of-state facilities; since these facilities are not obligated to take New Hampshire's wastes, this creates a very tenuous situation. For these reasons, DES has targeted

creating in-state septage disposal capacity as a high priority goal, and the adoption of the Septage Management Rules in 2005 was part of our proactive approach to address a serious and growing problem in the state. We would be happy to provide a detailed presentation on this issue and strategy at your request.

DES supports in concept the following elements of SB 346 for incorporation into the statute:

1. *Financial responsibility for septage treatment facilities*: DES supports this in concept. Please note that, given the wide variety of facility and site types and sizes, this cannot be "one size fits all" criteria.
2. *Training:* DES supports reasonable training requirements for facility operators and is able to establish these requirements. As with financial responsibility, we anticipate that these requirements will range from basic training for very small facilities up to wastewater treatment plant operator certification requirements for a multi-million gallon per day septage disposal facilities, should one be constructed.
3. *Public hearings:* The new rules contain a petition requirement under which, upon petition by 10 citizens, a public hearing will be held. The intent of this rule is to establish interest for a hearing before the costs of a hearing are incurred, to address the fairly regular occurrence where only the applicant and DES are in attendance. Nonetheless, DES does not object to mandatory public hearings for all septage facility permit applications if that is Legislature's preference.
4. *Public notification prior to land application:* For the reasons discussed in objection # 2 below, a public hearing every time septage or sludge is land applied, as proposed Paragraph 2 of SB 346, is burdensome, impractical, expensive, and unnecessary. However, DES does not object to mandatory notification of abutters by letter prior to land application if that is the Legislature's preference. This would be an expansion of the existing requirement in RSA 485-A:5-c which requires newspaper publication.

DES's objections to the proposed language in SB 346 are as follows:

1. This bill seeks to redefine "land application" to require septage, sludge or exceptional quality (EQ) solids or filtrate to be immediately incorporated into the soil. Both Federal and State regulations provide standards of treatment for these residual materials to be "top dressed" in a manner that is protective of human health and the environment. Requiring *immediate* incorporation limits the types of vegetation that could receive these materials, which could then be used on corn crops (for example), but not on hay or established grass land. This requirement would restrict the beneficial use of septage, sludge, or EQ solids or filtrate, and increase costs to municipalities and farmers who engage in the practice of land application with no substantial benefit.
2. Under the October 2005 rules, permitted sites that receive septage and sludge are required to annually publish a notice in the newspaper, 14 days prior to the commencement of land application, and to post signage at the site in order to restrict public access. SB 346 proposes to impose a requirement for *annual* public

hearings (a minimum of 30 days) prior to the land application of any septage, sludge, or EQ solids or filtrate. Currently, there are 70 permitted sites that receive septage or sludge in the state, which would require an annual hearing; so, as a baseline, 70 additional public hearings would be required per year by DES. This requirement would result in additional costs to the department, as well as to municipalities who manage their sludge with no clear return in increased environmental or public health protection. We know of no other permit type for sites of this size (small facilities, farm fields, etc.) where this is required.

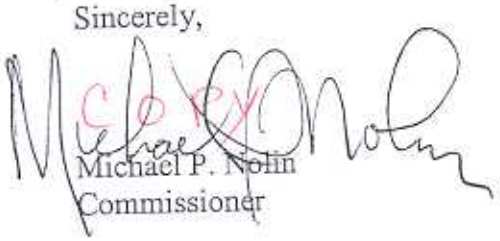
3. Also, regarding the public hearing requirement, in addition to the 70 permitted sites, there are also an indeterminable number of sites that could receive Class A biosolids (such as compost used by landscapers) or EQ solids or filtrate in a given year which are likely to be impacted. These sites would not require a DES permit but could also be required to conduct a public hearing under SB 346. This poses an unnecessary burden for application of materials such as compost. Land application of Class A sludge (compost) and EQ solids or filtrate, as defined by Env-Ws 800 and 1600 of the Sludge and Septage Management Rules, should be exempt from the notification requirements as noted in #4 above.
4. Although the bill's intent is unclear, SB 346 also could require a public hearing prior the issuance of each septage hauler permit. If this is the case, an additional 375 public hearings would be added to the above totals (cited in #2) on alternating years. DES calculates that the cost to the department could exceed $100,000 per year, with indeterminable increased costs to the municipalities for sludge and/or septage solids management.
5. The October 2005 Septage Management Rules introduced the concept of innovative and alternative treatment technology as a means to encourage capacity development and the replacement of old unlined septage lagoons that are phasing out. This is part of a proactive approach to encourage the creation of in-state disposal capacity. We believe that the new rules provide set-back and buffer distances which are reasonably protective of public health and the environment as well as abutters from nuisance issues. SB 346 proposes substantially more stringent set-back and buffer distances thus making it more costly and difficult for public or private entities to site septage disposal facilities.
6. SB 346 mandates a complaint process which is inconsistent with current DES practices (which we believe to be effective), too prescriptive, and appears to limit complaint privileges to only the abutters of a septage activity. Contrary to the intent, the constraints placed on the complainant and the department would force the department to be less responsive. And, it also does not accommodate situations where the complainant wishes to remain anonymous. Also, the proposed language has a number of technical flaws. For example, the Waste Management Council has no jurisdiction over resolving complaints and, in any event, the Water Council is the appeal council for sludge and septage matters. And, it makes little sense to have all complaints heard by any council. Even if the "Water Council" had been correctly identified in this bill, the Council cannot use the "rules of the department relative to adjudicative hearings". The Water Council is essentially an appeal board. Requiring adjudicative hearings, again, is an inefficient use of resources. Problems are often resolved without any formal

action; and in any event, DES can initiate enforcement actions without having to conduct adjudicative hearings at the start. All enforcement actions are currently posted on the DES web-site.

DES will support and concurs with the idea that training can be an important part of successfully operating an innovative alternative technology septage disposal facility. Like many states, when appropriate, DES has required training as a condition of permit issuance. DES also sees value in the requirement of having an applicant demonstrate financial responsibility prior to receiving a facility permit, particularly when siting large volume facilities. The demonstration of financial responsibility by a facility permittee may offer more assurance of environmental protection.

Again, thank-you for the opportunity to express the department's opinions on this matter. If you have any questions regarding this letter of testimony please contact me at 271-2958 or Patricia Hannon at 271-2758.

Sincerely,



Michael P. Nolin
Commissioner

cc: Sen. Martha Fuller Clark
Rep. James Phinizy
Rep. Suzanne Harvey
Rep. Sandra Balomenos Keans
Rep. James F. Powers